U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

February 6, 1998

E. Paul Jones, Esq.
P.O. Box 448
Alexander City, Alabama 35011-0448

Dear Mr. Jones:

This refers to the reduction in the number of county commissioners from six to five and the redistricting plan for Tallapoosa County, Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your most recent response to our May 23, 1997, request for additional information on November 20, 1997. On December 8, 1997, we received information responsive to our May 23, 1997, request from the Alabama Reapportionment Office in Montgomery, Alabama, which was prepared for the Tallapoosa County Commission during its redistricting process.

We have given careful consideration to the information you have provided, along with Census data and information and comments from other interested persons. Our review of the submitted changes is also informed by a history of noncompliance on the part of the county with legal requirements (constitutional, statutory, and court mandated) designed to protect the right to vote and to ensure minority voters, in particular, an equal electoral opportunity.

For example, during most of the 1970's the county implemented an unprecleared at-large method of election, in the absence of a fairly apportioned redistricting plan for its five single-member districts. In response to a Section 5 enforcement action brought by minority residents, the county in 1983 submitted for Section 5 review the change to an at-large method of election. Holly v. Sharpe, C.A. No. 82-17-E (M.D. Ala. 1982). We interposed an objection due largely to the retrogressive effect the change would have on minority electoral opportunity.

Following our 1983 objection, the county obtained preclearance for a fairly apportioned redistricting plan in 1985. However, despite significant malapportionment in this plan revealed by 1990 Census data and the failure of minority voters to elect a candidate of choice in the sole district with a bare black population majority, the county did not adopt a properly apportioned plan that fairly recognized minority voting strength until we brought suit under Section 2 of the Voting Rights Act, 42 U.S.C. 1973. United States v. Tallapoosa County, No. CV-93-D-1362-E (M.D. Ala. filed November 12, 1993).

In an effort to resolve this lawsuit, we negotiated to develop a remedial five-member redistricting plan for the county commission. In addition, representatives of the minority community, notably the Alabama Democratic Conference and its local affiliate, were involved in discussions with the county over a suitable remedy. In the course of these discussions, redistricting plans were developed which indicated that a five-member plan could be drawn containing reasonably compact districts, including one with a black voting age percentage in the high 50's.

The parties were unable to agree on a five-member redistricting plan to remedy the Section 2 violation. The county proposed a temporary expansion of the commission to six members, and we agreed. Increasing the size of the commission permitted the county to fashion a plan in which no white incumbent would have to oppose another white incumbent or would have to run in a majority black district. The parties agreed to a consent decree which the court approved on April 22, 1994, directing that the 1994 election be held under a plan containing six districts. The six-member plan developed by the county for use in the 1994 election contained a district with a 62.4 percent black voting age population (District 6). The election that followed produced the first black Tallapoosa County Commissioner this century.

The consent decree entered by the court also included the following joint representations by the parties regarding the factors that exist in the county that establish a prima facie violation of Section 2: (a) the county's black population is sufficiently numerous and geographically compact such that black persons can constitute a majority of the voting age population and registered voters in one out of five single-member districts; (b) voting in the county is racially polarized; and (c) white voters vote sufficiently as a bloc to usually defeat candidates of black voters' choice except in districts where blacks are a substantial majority of the electorate.

For the 1998 election and thereafter, the consent decree required that the county adopt a fairly apportioned five-member plan with one district with a majority black voting age population. At the time the consent decree was agreed to Commissioner John Neighbors had made known that, if elected in 1994, he would not seek reelection in 1998. Thus, the development of a five-member plan would likely not require any white incumbents seeking reelection in 1998 to run in the majority black district or against another incumbent.

The redistricting process for the plan to be used in 1998 began in 1995 and culminated in the adoption of the proposed plan in March 1997. It appears that the process on the whole proceeded in a manner calculated to minimize participation by the public in general, and the black community in particular. In contrast to the contacts and discussions in the period leading to the development of the 1994 plan, the county appears to have made no meaningful effort after 1994 to obtain the views of members of the minority community other than District 6 Commissioner Garland Gamble. Further, prior to the two occasions when the commission formally voted on the adoption of a plan, it appears that the commission held no public hearings to seek the public's views on redistricting for 1998 and failed to provide adequate public notice, as apparently required by Alabama Code § 11-3-1.1.

In 1995 Commissioner Gamble proposed a five-member plan containing reasonably compact districts, including one with a 57.5 percent black voting age population. His plan only paired two incumbents in the same district, himself and John Neighbors, the District 1 incumbent who had said that he would not be a candidate for reelection in 1998. For over a year, it appears, Mr. Gamble's proposal was not opposed by any other member of the county commission. However, in September 1996 the county resumed its redistricting efforts; this occurred shortly after Commissioner Neighbors reversed his prior statement and announced his intention to run for reelection. Stating that Commissioner Gamble's plan was unacceptable to him, Commissioner Neighbors proposed a plan in which the black population in the majority black district was reduced in order to improve his chances for reelection. In the plan proposed by Commissioner Neighbors he and Commissioner Gamble would be paired in a district having a black voting age population of 49.2 percent. No other district would have a black voting age population exceeding 30 percent.

The first formal vote on a 1998 redistricting plan took place in October 1996. Choosing between the two plans, the commission, voting along racial lines, adopted Commissioner Neighbors's plan over Commissioner Gamble's plan, despite the former plan's failure to meet the consent decree's requirement that one district have a black voting age population majority. A copy of the plan was provided to the District Court and to us as a party to the litigation, but it was not submitted for Section 5 review. Subsequently, the county rescinded its adoption of that plan. In its stead, the county adopted a similar plan in which the black voting age population of the minority district was increased by 2.5 percentage points, apparently in order to achieve a marginal majority in black voting age population. It is this plan that the county has submitted for Section 5 review.

According to 1990 Census data, black persons represent 26.2 percent of the county's total population, and 23.2 percent of its voting age population. Both the existing six-member plan and the proposed five-member plan contain only one district with a majority black population. In the existing plan this district has a 62.4 percent black voting age population based on 1990 Census data. In the proposed plan this district has a 51.7 percent black voting age population. The latter figure is likely to be even lower given the inclusion of an area with white, post-1990 population growth located south of Alexander City and west of Highway 63. Thus, the proposed plan reduces the black voting age population in the majority black district by at least 10.7 percentage points. The proposed majority black district is also very similar in configuration and population to the "minority" district in the plan in effect in 1990 in which the candidate of choice of minority voters lost the election by a significant margin.

Our analysis of the proposed plan indicates that the reduction in the black voting age population in the majority black district, in the context of the county's electoral history and pattern of racially polarized voting, is likely to affect adversely the ability of black voters to elect a candidate of their choice to the county commission. Furthermore, alternative five-member plans prepared before and after the adoption of the existing six-member plan demonstrate that such a large reduction in black population percentage is not necessary in order to achieve a fairly apportioned, constitutional five-member plan. The county has provided no information that would support a conclusion that the county's minority voters would have a fair opportunity to elect a candidate of choice under the proposed plan.

Taken together, the history of the instant redistricting process and its results raise serious concerns that the county, in reducing the black voting age population in the proposed majority black district, purposely impaired the ability of black voters to elect a candidate of choice in order to protect the reelection opportunities of a white incumbent. While we recognize that the desire to protect incumbents is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991) (supervisors who "acted primarily on the political interest of self-preservation" held to have intentionally discriminated when "they chose fragmentation of the Hispanic voting population as the avenue by which to achieve this self-preservation"); id. at 778-79 & n.1 (Kozinski, J., concurring in part and dissenting in part); Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985); Rybicki v. State Board of Elections, 574 F. Supp. 1082, 1109 (N.D. Ill. 1982) (three-judge court). It is clear that the county in devising the proposed plan impermissibly gave greater weight to protecting the electoral opportunity of a white incumbent than it did to complying with Section 5's mandate to avoid retrogression of minority voting strength. See Beer v. United States, 425 U.S. 130 (1976).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed redistricting plan.

We note that under Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

Because the change to a five-member commission is directly related to the proposed redistricting plan and cannot be implemented absent a precleared plan, the Attorney General will make no determination with regard to the reduction in size of the county commission. See 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Tallapoosa County plans to take concerning this matter. If you have any questions, you should call Thomas A. Reed (202-514-5682), an attorney in the Voting Section. Refer to File No. 97-1021 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division